



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Number: **201250027**  
Release Date: 12/14/2012

September 17, 2012

Contact Person:

Identification Number:

Contact Number:

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

UIL: 501.03-00; 501.03-30; 501.32-00; 501.33-00  
501.36-01

Dear :

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(3). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

Because you do not qualify for exemption as an organization described in Code section 501(c)(3), donors may not deduct contributions to you under Code section 170. You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

In accordance with Code section 6104(c), we will notify the appropriate State officials of our determination by sending them a copy of this final letter and the proposed adverse letter. You should contact your State officials if you have any questions about how this determination may affect your State responsibilities and requirements.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at 1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Holly O. Paz  
Director, Exempt Organizations  
Rulings and Agreements

Enclosure  
Notice 437  
Redacted Proposed Adverse Determination Letter  
Redacted Final Adverse Determination Letter



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Date: July 24, 2012

Contact Person:

Identification Number:

Contact Number:

FAX Number:

Employer Identification Number:

UIL #;s

501.03-00

501.03-30

501.32-00

501.33-00

501.36-01

Legend:

B = Law

C = Law

H = Name

J = Name

K = Name

L = Name

Q = Date

R = Business Name

S = State

w dollars= amount

x dollars= amount

Dear :

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code ("Code"). Based on the information provided, we have concluded that you do not qualify for exemption under section 501(c)(3) of the Code. The basis for our conclusion is set forth below.

### **Issue**

Do you qualify for exemption under section 501(c)(3) of the Code? No, for the reasons described below.

Do you meet the organizational test under section 501(c)(3) of the Code? No, for the reasons described below.

Do you meet the operational test under section 501(c)(3) of the Code? No, for the reasons described below.

### **Alternate Issue**

Do you meet the provisions described in 501(q)? No, for the reasons described below.

### **Facts**

K, your president and registered agent and L, your vice president and K's wife are foreclosure specialists and previously owned and operated R. R was in the business of providing foreclosure prevention and counseling services. The attorney general in the state of S made a consumer complaint against R and K. About 4 months before you were formed, R and K paid restitution of about one thousand dollars and court fees of about five hundred dollars to settle the allegations that they acted as a credit services organization in violation of B and C. The settlement states R and K deny any liability for the matters alleged by the plaintiff while the plaintiff made the agreement to avoid the uncertainty of litigation and the expense of the trial. R was later dissolved.

You were incorporated on Q as a nonprofit corporation under the state of S, which was about three months after K's settlement with the state attorney general. Your Articles of Incorporation state you are organized:

- To provide foreclosure prevention and counseling services.
- To provide information and assistance to help avoid foreclosure.
- To help establish workable and responsible payment arrangements through debt management programs.
- To help educate individual clients, as well as the community, on the wise use of credit and money management.

Your primary activity is providing foreclosure prevention and counseling services to homeowners who face possible foreclosure. You limit your services to individuals who are employed but who previously experienced a recognizable hardship. You find out the clients' ability to pay your fee upon assessing their situation and screen the clients prior

to agreeing to work with them. You will advertise your services by letters, brochures and other methods and focus your services on those who have attempted to work out a solution with the mortgage company but were denied or having a difficult time reaching an agreement.

Your counseling services typically consist of one session, which takes about one to three hours. Your process is as follows:

- 1) You discuss the hardship, which led to the possible foreclosure. You review the client's (a) employment status, (b) commitment to work diligently in keeping the home, and (c) mortgage and property details including the interest rate and types of loans such as an adjustable rate mortgage, current property value, mortgage balance, property taxes and homeowners insurance.
- 2) You request a detailed monthly financial accounting including monthly household income and itemized monthly expenses. You advise the client of any expenses that can be reduced.
- 3) You consider the following factors before you permit the client to enter into a contract for your services.
  - What hardship or hardships did the client encounter?
  - Is the hardship temporary or permanent?
  - Has the hardship ended?
  - How many are there in the household? If anyone is unemployed, is it temporary or permanent?
  - How many months is the client behind?
  - Has the client attempted a workout with the mortgage company?
  - Has the client been able to resume making any mortgage payments?
  - Has the client applied for a homeowner's exemption?
- 4) Your next step is signing the client into your counseling program. You do not sign a client whom you believe you cannot help. Your determination is based on the client's answers to the above questions. You make sure that every client you sign has a clear understanding that the mitigation process is difficult but achievable. You believe that a mortgage company looks favorably on a family with a completed or recently completed hardship, a positive income, a budget, and the ability to resume their mortgage.
- 5) According to your client contract, you provide the following services on behalf of your client for a dollar amount the client pays at the time of the contract is signed; however, you did not provide the amount or how you determine how much a client pays. The contract states you will:

- Contact the client's mortgage company and obtain information related to the nature and extent of the existing defaults in the client's mortgage loan obligations.
- Work with the client to attempt to fix the existing defaults in the client's mortgage loan obligations.
- Address how to cure the existing mortgage loan defaults with a representative of the client's mortgage company and attempt to formulate an acceptable resolution to avoid the foreclosure of the client's mortgage loan.
- Obtain on behalf of the client if necessary, the legal representation of an attorney in the pending foreclosure case to keep apprised of the status of such legal action and to delay such legal action, and if possible, to provide time to negotiate a resolution by curing delinquencies.

The contract also addresses the client's obligations and rules including the following:

- Clients will fully cooperate with you in your effort to seek the forbearance agreement, negotiate a repayment program, or other agreement to terminate the foreclosure action. Clients must make available to you all documents needed for you to address issues towards a resolution of repairing a client's delinquent mortgage obligation. If not timely, you may withdraw and a client forfeits all fees.
- The contract may be terminated by you in cases where the client fails to provide the requested documents in a timely manner without fee refund.
- The client shall deposit funds in a designated account in an amount determined by the client's loan arrearages for as long as you determine based on the client's financial situation. The client controls and maintains the account. When you have negotiated a settlement with the client's mortgage company, the client agrees to pay the settlement amount directly to the mortgage company. If a client does not, cannot, or will not deliver the funds to the mortgage company, you have the right to withdraw representation without the refund of any fees to clients.
- The client shall perform all other reasonable requests and/or instructions from you necessary to cure the existing mortgage loan defaults and/or a forbearance or repayment of some type of such arrearage.
- The agreement requires clients to acknowledge and agree that failure to furnish any changes in their financial, personal or economic situation/information will constitute a breach of contract and cause the termination of the agreement.
- Upon the termination of the contract, you will be relieved of all responsibility, obligation to perform, and any liability. The fee paid by the clients upfront will be forfeited. Moreover, the agreement states "If this agreement is terminated prior

to the conclusion of servicer performance of any portion of the process, the fee due shall be calculated based on actual time invested at about \$75.00 per hour.

You will provide your clients an introductory letter, and a comprehensive checklist of documents they must sign. The documents consist of the following:

- An Authorization of Release of Information to you, which allows you to obtain information from the mortgage company.
- A Mortgage Authorization Release Form, which allows the mortgage holder to release information to you.
- An Agreement of Agency (Your agreement with the client)
- The notice of the three-day cancellation policy . This states the client can cancel the agreement without any penalty within three days after signing it.

Your brochure advertises that you are a mortgage mitigation specialist. Notable catch phrases in the brochure are as follows:

"The Lender Does Not Want To Take Your Home."

"In fact, when a lender has too many homes in foreclosure, it limits their ability to borrow."

"Most Of The Time, Bankruptcy Is Not Necessary."

"We help you ... to reach an agreement to help you keep your home."

You did not explain how much you charge for your services; however, you do require an upfront fee from the clients before you provide any services according to your agreement. Your agreement indicates the clients may have an option to pay the fee in two installments within a certain period and the fee is not refundable.

You do not have a fee waiver policy for the people who cannot afford your fees. Currently your sole income source is from the fees you charge, as you have not received any funding from governments or charities. You stated you will apply for the grants, but you did not provide any details or plans.

During the processing of your application, you provided the following:

- You only submitted an incomplete lease agreement for your office space. The agreement was between R and an unrelated landlord. You did not provide any explanation or details as to how you decided to assume R's lease.
- We requested board meeting minutes but you were unable to provide any.
- Your initial form 1023 only indicates K and L as board members. You later identified H as your president/CEO and J as your board member. No information

was submitted to show when or how they were appointed or who appointed them.

## Law

Section 501(a) of the Code provides that an organization described in section 501(c)(3) shall be exempt from taxation.

Section 501(c)(3) of the Code provides that corporations may be exempt from tax if they are organized and operated exclusively for charitable or educational purposes and no part of their net earnings inures to the benefit of any private shareholder or individual.

Section 501(q) of the Code provides that organizations which provide "credit counseling services" as a substantial purpose shall not be exempt from taxation under section 501(a) unless they are described in sections 501(c)(3) or 501(c)(4) and they are organized and operated in accordance with the following requirements:

### (1)(A) The organization--

- (i) provides credit counseling services tailored to the specific needs and circumstances of consumers,
- (ii) makes no loans to debtors (other than loans with no fees or interest) and does not negotiate the making of loans on behalf of debtors,
- (iii) provides services for the purpose of improving a consumer's credit record, credit history, or credit rating only to the extent that such services are incidental to providing credit counseling services, and
- (iv) does not charge any separately stated fee for services for the purpose of improving any consumer's credit record, credit history, or credit rating.

(1)(B) The organization does not refuse to provide credit counseling services to a consumer due to the inability of the consumer to pay, the ineligibility of the consumer for debt management plan enrollment, or the unwillingness of the consumer to enroll in a debt management plan.

### (1)(C) The organization establishes and implements a fee policy which--

- (i) requires any fees charged to a consumer for services are reasonable,
- (ii) allows for the waiver of fees if the consumer is unable to pay, and
- (iii) except to the extent allowed by S law, prohibits charging any fee based in whole or in part on a percentage of the consumer's debt, the consumer's payments to be made pursuant to a debt management plan,



or the projected or actual savings to the consumer resulting from enrolling in a debt management plan.

(1)(D) At all times the organization has a board of directors or other governing body-

(i) which is controlled by persons who represent the broad interests of the public, such as public officials acting in their capacities as such, persons having special knowledge or expertise in credit or financial education, and community leaders,

(ii) not more than 20 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees or the repayment of consumer debt to creditors other than the credit counseling organization or its affiliates), and

(iii) not more than 49 percent of the voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization's activities (other than through the receipt of reasonable directors' fees).

Section 501(q)(4)(A) defines, for purposes of section 501(q), the term "credit counseling services" to mean (i) the providing of educational information to the general public on budgeting, personal finance, financial literacy, saving and spending practices, and the sound use of consumer credit; (ii) the assisting of individuals and families with financial problems by providing them with counseling; or (iii) a combination of the activities described above.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations ("regulations") provides that, in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(i) of the regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization:

- (a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities that in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(c)(1) of the regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in section 501(c)(3) of the Code. An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Section 1.501(c)(3)-1(c)(2) of the regulations provides that an organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private shareholders or individuals. Section 1.501(a)-1(c) of the regulations defines the words "private shareholder or individual" in section 501 of the Code to refer to persons having a personal and private interest in the activities of the organization.

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an applicant organization is not organized or operated exclusively for one or more of the purposes specified in subdivision (i) of this subparagraph unless it serves a public rather than a private interest. Thus, to meet the requirement of this subdivision, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Section 1.501(c)(3)-1(d)(3)(i) of the regulations provides that the term "educational," as used in section 501(c)(3) of the Code, relates to:

- (a) The instruction or training of the individual for the purpose of improving or developing his capabilities; or
- (b) The instruction of the public on subjects useful to the individual and beneficial to the community.

In Rev. Rul. 69-441, 1969-2 C.B. 115, the Service found that a nonprofit organization formed to help reduce personal bankruptcy by informing the public on personal money management and aiding low-income individuals and families with financial problems was exempt under section 501(c)(3) of the Code. Its board of directors were comprised of representatives from religious organizations, civic groups, labor unions, business groups, and educational institutions.

The organization provided information to the public on budgeting, buying practices, and the sound use of consumer credit through the use of films, speakers, and publications. It aided low-income individuals and families who have financial problems by providing them with individual counseling, and if necessary, by establishing budget plans. Under the budget plan, the debtor voluntarily made fixed payments to the organization, holding the funds in a trust account and disbursing the funds on a partial payment basis to the creditors. The organization did not charge fees for counseling services or proration services. The debtor received full credit against his debts for all amounts paid. The

organization did not make loans to debtors or negotiate loans on their behalf. Finally, the organization relied upon contributions, primarily from the creditors participating in the organization's budget plans, for its support.

The ruling found that, by aiding low-income individuals and families who have financial problems and by providing, without charge, counseling as a means for the orderly discharge of indebtedness, the organization was relieving the poor and distressed. Moreover, by providing the public with information on budgeting, buying practices, and the sound use of consumer credit, the organization was instructing the public on subjects useful to the individual and beneficial to the community. Thus, the organization was exempt from federal income tax under section 501(c)(3) of the Code.

The ruling compared this holding with the holding of Rev. Rul. 65-299, which holds that a nonprofit organization formed to advise, counsel, and assist individuals in solving their financial difficulties by budgeting their income and expenses and effecting an orderly program for the payment of their obligations qualifies for exemption from federal income tax under section 501(c)(4) of the Code (rather than under section 501(c)(3)).

Outside the context of credit counseling, individual counseling has, in a number of instances, been held to be a tax exempt charitable activity. Rev. Rul. 78-99, 1978-1 C.B. 152 (free individual and group counseling of widows); Rev. Rul. 76-205, 1976-1 C.B. 154 (free counseling and English instruction for immigrants); Rev. Rul. 73-569, 1973-2 C.B. 178 (free counseling to pregnant women); Rev. Rul. 70-590, 1970-2 C.B. 116 (clinic to help users of mind-altering drugs); Rev. Rul. 70-640, 1970-2 C.B. 117 (free marriage counseling); Rev. Rul. 68-71, 1968-1 C.B. 249 (career planning education through free vocational counseling and publications sold at a nominal charge). Overwhelmingly, the counseling activities described in these rulings were provided free, and the organizations were supported by contributions from the public.

In Better Business Bureau of Washington, D.C. v. U.S., 326 U.S. 279, 283, 66 S. Ct. 112, 90 L. Ed. 67 (1945), the Supreme Court held that the "presence of a single . . . [nonexempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly . . . [exempt] purposes."

In B.S.W. Group, Inc. v. Commissioner, 70 T.C. 352 (1978), the court found that a corporation formed to provide consulting services did not satisfy the operational test under section 501(c)(3) of the Code because its activities constituted the conduct of a trade or business that is ordinarily carried on by commercial ventures organized for profit. Its primary purpose was not charitable, educational, or scientific, but rather commercial. In addition, the court found that the organization's financing did not resemble that of typical section 501(c)(3) organizations. It had not solicited, nor had it received, voluntary contributions from the public. Its only source of income was fees from services, and those fees were set high enough to recoup all projected costs and to produce a profit. Moreover, it did not appear that the corporation ever planned to

charge a fee less than "cost." Finally, the corporation did not limit its clientele to organizations that were section 501(c)(3) exempt organizations.

In Consumer Credit Counseling Service of Alabama, Inc. v. United States, 78-2 U.S.T.C. 9660 (D.D.C. 1978), the court held that an organization that provided free information on budgeting, buying practices, and the sound use of consumer credit qualified for exemption from income tax because its activities were charitable and educational.

The Consumer Credit Counseling Service of Alabama is an umbrella organization made up of numerous credit counseling service agencies. These agencies provided information to the general public through the use of speakers, films, and publications on the subjects of budgeting, buying practices, and the sound use of consumer credit. They also provided counseling on budgeting and the appropriate use of consumer credit to debt-distressed individuals and families. They did not limit these services to low-income individuals and families, but they did provide such services free of charge. As an adjunct to the counseling function, they offered a debt management plan. Approximately 12 percent of a professional counselor's time was applied to the debt management plan as opposed to education. The agencies charged a nominal fee of up to \$10 per month for the debt management plan. This fee was waived in instances when payment of the fee would work a financial hardship.

The professional counselors employed by the organizations spent about 88 percent of their time in activities such as information dissemination and counseling assistance rather than those connected with the debt management programs. The primary sources of revenue for these organizations were provided by government and private foundation grants, contributions, and assistance from labor agencies and the United Way. An incidental amount of their revenue was from service fees. Thus, the court concluded, "each of the plaintiff consumer credit counseling agencies was an organization described in section 501(c)(3) as a charitable and educational organization." See also, Credit Counseling Centers of Oklahoma, Inc. v. United States, 79-2 U.S. Tax Cas. 9468 (D.D.C. 1979), in which the facts were virtually identical and the law was identical to those in Consumer Credit Counseling Service of Alabama, Inc. v. United States, discussed immediately above.

In Easter House v. U.S., 12 Cl. Ct. 476, 486 (1987), aff'd, 846 F. 2d 78 (Fed. Cir.) cert. denied, 488 U.S. 907, 109 S. Ct. 257, 102 L. Ed. 2d 246 (1988), the court found an organization that operated an adoption agency was not exempt under section 501(c)(3) of the Code because a substantial purpose of the agency was a nonexempt commercial purpose. The court concluded that the organization did not qualify for exemption under section 501(c)(3) because its primary activity was placing children for adoption in a manner indistinguishable from that of a commercial adoption agency. The court rejected the organization's argument that the adoption services merely complemented the health related services to unwed mothers and their children. Rather, the court found that the health-related services were merely incident to the organization's operation of

an adoption service, which, in and of itself, did not serve an exempt purpose. The organization's sole source of support was the fees it charged adoptive parents, rather than contributions from the public. The court also found that the organization competed with for-profit adoption agencies, engaged in substantial advertising, and accumulated substantial profits. Accordingly, the court found that the "business purpose, and not the advancement of educational and charitable activities purpose, of plaintiff's adoption service was its primary goal" and held that the organization was not operated exclusively for purposes described in section 501(c)(3). Easter House, 12 Cl. Ct. at 485-486.

In Living Faith, Inc. v. Commissioner, 950 F.2d 365 (1991), the Court of Appeals upheld a Tax Court decision that an organization operating restaurants and health food stores in a manner consistent with the doctrines of the Seventh Day Adventist Church did not qualify for exemption under section 501(c)(3) of the Code because the organization was operated for a substantial nonexempt commercial purpose. The court found that the organization's activities were "presumptively commercial" because the organization was in competition with other restaurants, engaged in marketing, and generally operated in a manner similar to commercial businesses.

In Airlie Foundation v. Commissioner, 283 F. Supp. 2d 58 (D.D.C., 2003), the court relied on the "commerciality" doctrine in applying the operational test. Because of the commercial manner in which this organization conducted its activities, the court found that it was operated for a non-exempt commercial purpose, rather than for a tax exempt purpose. As the court stated:

Among the major factors courts have considered in assessing commerciality are competition with for profit commercial entities; extent and degree of below cost services provided; pricing policies; and reasonableness of financial reserves. Additional factors include, inter alia, whether the organization uses commercial promotional methods (e.g. advertising) and the extent to which the organization receives charitable donations.

In Solution Plus, Inc. v. Commissioner, T.C. Memo. 2008-21, the Tax Court held that a credit counseling organization was not exempt under section 501(c)(3) because it was not organized and operated exclusively for educational or charitable purposes and impermissibly served private interests. The organization was formed by an individual with experience selling debt management plans. The founder and his spouse were the only members of the organization's board of directors. The organization did not have any meaningful educational program or materials for providing to people who contacted the organization, and its financial education seminars for students constituted an insignificant part of the organization's overall activities.

The Court held that the organization's purposes were not educational because its "activities are primarily structured to market, determine eligibility for, and enroll

individuals in DMPs." Its purposes are not to inform consumers "about understanding the cause of, and devising personal solutions to, consumers' financial problems," or "to consider the particular knowledge of individual callers about managing their personal finances." The Tax Court also held that the organization's purposes were not charitable because "its potential customers are not members of a [charitable] class that are benefited in a 'non-select manner \* \* \* because they will be turned away unless they meet the criteria of the participating creditors."

The Tax Court further held the organization would operate for the private interests of its founder because the founder and spouse were the only directors, the founder was the only officer and employee, and his compensation was based in part on the organization's DMP sales activity levels. The organization was "a family-controlled business that he personally would run for financial gain, using his past professional experience marketing DMPs and managing a DMP call center." The Court further held that the organization's principal activity of providing DMP services, which were only provided if approved by a caller's creditors, furthered the benefit of private interests.

Finally, the Tax Court held that the facts in Credit Counseling Services of Alabama v. United States, 78-2 U.S.T.C. 9660 (D.D.C. 1978) "stand in stark contrast" because "the sale of DMPs is the primary reason for [Solution Plus's] existence, and its charitable and educational purposes are, at best, minimal."

### **Application of Law**

Section 501(c)(3) of the Code sets forth two main tests for an organization to be recognized as exempt. An organization must be both organized and operated exclusively for purposes described in section 501(c)(3) of the Code and section 1.501(c)(3)-1(a)(1) of the regulations. You fail both tests.

### **Organizational Test**

You do not meet the requirements in Section 1.501(c)(3)-1(b)(1)(i) of the Income Tax Regulations. Your Articles of Incorporation state you are organized to:

- Provide foreclosure prevention and counseling services,
- Provide information and assistance to help avoid foreclosure,
- Help establish workable and responsible payment arrangements through debt management programs,
- Help educate individual clients, as well as the community, on the wise use of credit and money management.

Because your purpose clause is too broad, you are not organized exclusively for purposes described in the regulations.

### Operational Test

To satisfy the 501(c)(3) operational tests, an organization must establish that it is operated exclusively for one or more exempt purposes. See section 1.501(c)(3)-1(c)(1) of the regulations. You failed to establish you are operated exclusively for one or more exempt purposes.

### Your Activities Are Not Educational

Your counseling activities are not described in section 1.501(c)(3)-1(d)(3)(i) of the regulations because the purpose of your counseling is to provide foreclosure preventions services for a fee. The focus of your counseling is to gather financial information from potential clients to determine whether they are good candidates for your services. Moreover, the terms concerning client obligations and responsibilities in your client contract substantiates that your counseling sessions are not an educational activity within the meaning of the regulations. Furthermore, you do not :

- Operate a substantive on-going educational program.
- Dedicate any revenue to activities involving educational programs.
- Allocate any expenses to training employees

Therefore, you have failed to demonstrate that your counseling sessions are designed to provide instruction or training "useful to the individual and beneficial to the community" within the meaning of section 1.501(c)(3)-1(d)(3)(i) of the regulations. Thus, you are not operated exclusively for educational purposes within the meaning of section 501(c)(3) of the Code.

You are not like the organizations in Consumer Credit Counseling Service of Alabama, supra, and Rev. Rul. 69-441. For example:

- The methods used in your counseling sessions are not structured to improve your clients' understanding of their financial problems or their skills in solving them.
- The purpose of your counseling sessions is to cure the existing defaults in the clients' mortgage loan obligations.

You are similar to the organization in Solution Plus. You did not provide evidence that you help clients develop an understanding of the cause of their financial problems or a plan to address their financial problems. You provided no evidence that you intend to establish long-term counseling relationships with your clients. In fact, you generally only have one session. In addition, like the organization in the court case your efforts are focused on informing potential clients about your foreclosure prevention services and signing a contract with them, rather than on conducting a meaningful educational program.

### You Have a Substantial Nonexempt Commercial Purpose

You are not as described in Section 1.501(c)(3)-1(c)(1) of the Regulations because you are primarily providing foreclosure prevention services in a commercial manner. In fact, you took over the operation of R, your founder's K business after it settled a complaint with the state attorney general. In addition, you are staffed by the same counselors as R and using the same venue. In addition, the fact that you limit your services to those who are employed, and screen you clients after finding out their ability to pay before agreeing to work with them illustrates your commercial intent. Moreover, your fee structure demonstrates your commercial intent. For example:

- You require a large upfront fee.
- You charge a high hourly rate of about \$75.00.
- You have a stringent refund policy.

You are similar to the organizations in Easter House, supra, Airlie, supra, and Living Faith, supra because you are operating like a for profit business. Furthermore, your commercial intent is substantiated by the following provisions in your contract:

- Clients will fully cooperate with you in your effort to seek forbearance agreement, negotiate a repayment program, or other agreement to terminate the foreclosure action. Clients must make available to you all documents needed for you to address issues towards a resolution of repairing a client's delinquent mortgage obligation. If not timely, you may withdraw and a client forfeits all fees.
- The contract may be terminated by you in cases where the client fails to provide the requested documents in a timely manner without any fee refund.

You are not like the organization described in Consumer Credit Counseling Service of Alabama. You are receiving your revenue primarily from service fees while these organizations relied on the bulk of their support from government and private foundation grants, contributions, and assistance from labor agencies and the United Way.

### Inurement/Private Benefits

You are not described in Section 1.501(c)(3)-1(c)(2) of the Regulations because you are not operated exclusively for exempt purposes. Your net earnings inure to the benefit of K and L. This is indicated by the following:

- You are taking over the operations of R which was the for profit business owned by your founder K and his wife L after R settled a lawsuit with the attorney general.
- You took over R's lease agreement.



- K and L are budgeted to receive a salary of fifty thousand dollars and are your only employees.

In addition, the current make up of your board indicates inurement because you did not present any evidence as to whether the new board members have been actively involved in your operations and participated in any major decisions.

You are similar to the organizations in Nelson v. Commissioner and Christian Echoes National Ministry, Inc. v. United States, because you have failed to show that you are operating exclusively for exempt purposes and not for the private interests of K and L.

#### Section 501(q) of the Code

An organization that provides educational information on financial topics or financial counseling to homeowners who are at risk of foreclosure is providing "credit counseling services" within the meaning of section 501(q)(4)(A) of the Code. Thus, even if you had established that you engage in such activities as a substantial purpose, to be exempt from taxation you must in addition to complying with the requirements of section 501(c)(3), comply with the provisions of section 501(q).

You do not comply with section 501(q)(1)(A)(i) of the Code. The Code requires a credit counseling organization to provide credit counseling services tailored to the specific needs and circumstances of consumers. However, your services only focus on the mortgage mitigation services. You actually limit your services to the people who have a high probability to succeed with your mortgage mitigation services. This clearly indicates you have little or no educational purpose or intention to provide tailored credit counseling services to the consumers within the meaning of 501(q). Therefore, you failed to meet the requirement of section 501(q)(1)(A)(i) of the Code.

You also do not comply with section 501(q)(1)(C)(i) and (ii) of the Code. The Code requires an exempt credit counseling organization to establish and implement a fee policy, which requires that any fees charged to a consumer for services are reasonable, and allows for the waiver of fees if the consumer is unable to pay. However, you did not show that you have a fee policy in your Form 1023 application, nor in your responses. Therefore, you failed to meet the requirement of section 501(q)(1)(C).

The initial Form 1023 indicates that K and L will be compensated as your employees, and it appears that they are the actual decision makers for your major organizational matters and operators of your day-to-day operations. Although you later added two new directors, it appears that they were appointed by K and L. You failed to provide any board meeting minutes to show the new directors' had any involvement your organizational matters or have any authority in decision making. Therefore, your governing body does not comply with section 501(q)(1)(D)(ii) that requires that at all times the organization must have a board of directors or other governing body not more than 20 percent of the voting power of which is vested in persons who are employed by

the organization or who will benefit financially, directly or indirectly, from the organization's activities, because two out of four governing members will benefit financially from your operation.

Had you established that you provide educational information on financial topics or financial counseling to homeowners who are at risk of foreclosure as a substantial purpose, and that you otherwise met the requirements of section 501(c)(3), your failure to satisfy the requirements of section 501(q) would prevent you from being exempt from taxation under section 501(a).

### **Conclusion**

In summary, you are not organized exclusively for exempt purposes because your Articles do not limit your purposes to one or more exempt purposes. You also fail the operational test because you are not operated exclusively for educational or charitable purpose. Specifically, you fail the operational test for exemption under section 501(c)(3) of the Code because your mortgage mitigation counseling services are commercial in nature and you have the substantial private purpose of benefiting K and L. In addition, you fail to qualify under section 501(q) of the Code because you compensate two of your governing members out of four and your mortgage mitigation counseling is not tailored to the individual client. Accordingly, you do not qualify for exemption as an organization described in section 501(c)(3) of the Code and you must file federal income tax returns. Contributions to you are not deductible under section 170.

You have the right to file a protest if you believe this determination is incorrect. To protest, you must submit a statement of your views and fully explain your reasoning. You must submit the statement, signed by one of your officers, within 30 days from the date of this letter. We will consider your statement and decide if the information affects our determination. If your statement does not provide a basis to reconsider our determination, we will forward your case to our Appeals Office. You can find more information about the role of the Appeals Office in Publication 892, *Exempt Organization Appeal Procedures for Unagreed Issues*.

*Types of information that should be included in your appeal can be found on page 2 of Publication 892, under the heading "Regional Office Appeal". The statement of facts (item 4) must be accompanied by the following declaration:*

*"Under penalties of perjury, I declare that I have examined the statement of facts presented in this appeal and in any accompanying schedules and statements and, to the best of my knowledge and belief, they are true, correct, and complete."*

*The declaration must be signed by an officer or trustee of the organization who has personal knowledge of the facts.*

*Your appeal will be considered incomplete without this statement.*

*If an organization's representative submits the appeal, a substitute declaration must be included stating that the representative prepared the appeal and accompanying documents; and whether the representative knows personally that the statements of facts contained in the appeal and accompanying documents are true and correct.*

An attorney, certified public accountant, or an individual enrolled to practice before the Internal Revenue Service may represent you during the appeal process. If you want representation during the appeal process, you must file a proper power of attorney, Form 2848, *Power of Attorney and Declaration of Representative*, if you have not already done so. You can find more information about representation in Publication 947, *Practice Before the IRS and Power of Attorney*. All forms and publications mentioned in this letter can be found at [www.irs.gov](http://www.irs.gov), Forms and Publications.

If you do not file a protest within 30 days, you will not be able to file a suit for declaratory judgment in court because the Internal Revenue Service (IRS) will consider the failure to appeal as a failure to exhaust available administrative remedies. Code section 7428(b)(2) provides, in part, that a declaratory judgment or decree shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted all of the administrative remedies available to it within the IRS.

If you do not intend to protest this determination, you do not need to take any further action. If we do not hear from you within 30 days, we will issue a final adverse determination letter. That letter will provide information about filing tax returns and other matters.

Please send your protest statement, Form 2848, and any supporting documents to the applicable address:

Mail to:

Deliver to:

Internal Revenue Service  
EO Determinations Quality Assurance  
Room 7-008  
P.O. Box 2508  
Cincinnati, OH 45201

Internal Revenue Service  
EO Determinations Quality Assurance  
550 Main Street, Room 7-008  
Cincinnati, OH 45202

You may fax your statement using the fax number shown in the heading of this letter. If you fax your statement, please call the person identified in the heading of this letter to confirm that he or she received your fax.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Lois G. Lerner  
Director, Exempt Organizations

Enclosure, Publication 892